

May 20, 1975

SENATOR R. LEWIS: Well then I would like to speak against the specific amendment. I would most vigorously oppose this type of an amendment. This problem is serious. This problem is real. I can't see what the effect of Senator Bereuter's amendment is going to be to alleviate the situation, because he's going to have to go through the same process. They're going to have to have a hearing of the landowners in the area. They're going to . . . the directors, the natural resource district directors are going to have to make a determination based on this hearing. As I understand it they would establish a moratorium within this area. There would be no drilling for that period of that moratorium. I think that this only is a way of slowing up the process. I don't think it does a thing to remedy the situation. I would just like to quote a little bit from the Final Reading copy of 317, Senator Bereuter's land use bill. I can't understand his concern about vesting authority in the directors to restrict drilling under real severe and critical conditions because he is besting far more authority in a planning commission in his LB 317. It appears that the problem here is how we handle underground waters. Now he says that "everyone has a right to water under that land". I think this is probably absolutely true, but you have a right to that water only if there is water under that land. If you're going to permit indiscriminate pumping to pump that down and deplete that to the point where there is no water, how much weight, in effect, does that right have? I think that my amendment, if passed on this floor with 30 affirmative votes, . . . largely I expect because two of the most decident members, as far as this particular issue are concerned, were absent. This was not planned. It was just a hapininstance. The bill came up in its proper order. At this moment I don't think I will talk any more on the subject, but I do certainly oppose repeal of my amendment and the addition of the Bereuter amendment.

PRESIDENT: Senator Kelly.

SENATOR KELLY: Mr. President, members of the Legislature, I support returning this bill for the specific amendment. I want to talk a little bit about water law as it effects surface water and water law as it effects underground water. You should be aware, and I know you are, that we have in surface water the right . . . the first right is the best right. That's the right to surface water. This is . . . in our Constitution this is case law way back from the 1870's. We all understand that prior appropriation works in surface water. In underground water the theory of distribution of this resource is with the land. That water is available to everybody on a share and share alike basis, if you can get to it from your own private land. The Lewis amendment, on 577, will prohibit access to the underground water of landowners in a critical area. They simply will be barred, similar to building a 10 foot wall along the side of a river so that the adjoining landowner cannot in any way even get a look at the water. This is in contrary to the accepted opinion of who the underground water belongs to and what can be done with the underground water in the State of Nebraska. The point in 577 is that when a neighborhood